

CONTRACT FOR
WALLBOARD PLANT
AT
SEATTLE, WASHINGTON
FOR
KAISER GYPSUM COMPANY, INC.

JOB 5340

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ARCHITECT-ENGINEER COST-PLUS-A-FIXED-FEE CONTRACT

THIS AGREEMENT, made and entered into as of the 13th day of July, 1953, by and between KAISER GYPSUM COMPANY, INC. (hereinafter called "Owner") and KAISER ENGINEERS DIVISION OF HENRY J. KAISER COMPANY, a Nevada Corporation (hereinafter called "Architect-Engineer").

W I T N E S S E T H

WHEREAS, Owner and Architect-Engineer have heretofore entered into an agreement (hereinafter called the "Master Agreement") whereby Architect-Engineer has been employed to perform general staff engineering services for Owner and whereby upon specific authorization, Architect-Engineer will perform detailed engineering services with its Direct Engineering Department and also construction management services; and

WHEREAS, Owner desires to have designed and constructed a Wallboard Plant at Seattle, Washington; and

WHEREAS, Owner desires to employ Architect-Engineer to prepare detailed plans and specifications and perform all construction management services in connection with the acquisition and construction of the above-mentioned Wallboard Plant;

NOW, THEREFORE, it is agreed by and between the parties hereto as follows;

ARTICLE A - SCOPE OF WORK.

Section A-1. Architect-Engineer, as promptly and economically as practicable, shall perform necessary architectural, engineering design, and as agent for Owner shall procure, order and furnish equipment and materials and provide construction management services, for the construction of a Wallboard Plant, complete and ready for operation, with appurtenant and related facilities for Owner at Seattle, Washington, all of which will be more specifically set forth in a "Description of

the Work" to be prepared by Architect-Engineer and which when so prepared will be marked Exhibit "A" and made a part hereof by Change Order hereto approved by Owner, (all hereinafter sometimes referred to as "The Work").

Section A-2. Architect-Engineer is hereby authorized to purchase from manufacturers and/or vendors all necessary facilities, equipment, materials, and supplies for The Work as agent of and for the account of Owner and is further authorized to act as Owner's Representative in administration of contracts in the performance of construction management services. All payments becoming due under any purchase orders or contracts in connection with The Work shall be made by Owner direct to vendors or contractors.

ARTICLE B - COSTS OF THE WORK.

Section B-1. It is the intention of the parties that Architect-Engineer shall be paid its costs of performing The Work plus a fixed fee. For the purposes hereof, the costs of The Work for which Architect-Engineer is to be reimbursed by Owner hereunder shall be as follows:

A. Field Costs. Excluding costs and expenses of work performed in the field by personnel comprising the Engineers' Staff and/or Direct Engineering Department as hereafter mentioned and to be reimbursed as hereafter provided, Owner shall pay Architect-Engineer all costs and expenses of every kind incurred in connection with The Work in the field, including but not limited to the following:

(1) All amounts actually paid or incurred by Architect-Engineer under contracts and/or purchase orders properly let or issued by Architect-Engineer from the field.

(2) All amounts incurred or paid by Architect-Engineer for field construction supervision and labor, including wages, salaries and necessary expenses of Architect-Engineer's field personnel directly engaged in The Work, field men engaged in supervision, field engineering, field office accounting, field office purchasing and expediting and the cost of all other necessary field office work and services. To the wage and salary costs of Architect-Engineer as

mentioned in this subparagraph (2), there shall be added an amount equal to five percent (5%) of the total payroll of employees engaged in The Work not covered by Union Agreement to allow for vacation pay and sick leave. In the event any employees mentioned in this subparagraph (2) are covered by Union agreements, the provisions for vacations, sick leave, pensions, or other employee benefits, in such Union agreements shall be considered as items of cost for which Architect-Engineer shall be reimbursed.

(3) All amounts paid or incurred by Architect-Engineer under equipment rental agreements for rental, maintenance, operation and repair of construction tools and equipment necessary for the performance of The Work and rental charges for equipment owned by Architect-Engineer provided, however, that such charges shall not exceed the then current standard rates for like equipment.

(4) All premiums paid or incurred by Architect-Engineer for Workmen's Compensation Insurance, Comprehensive Public Liability Insurance, Property Damage Insurance, Builder's Risk Insurance, Employees' Group Insurance and any other insurance relating to The Work which may be desired or approved by Owner, as well as all amounts incurred or paid by Architect-Engineer for or on account of any employee trusts or other employee benefit plans now or hereafter established in accordance with general policies adopted by Architect-Engineer and approved by Owner.

(5) All amounts paid or incurred by Architect-Engineer for Social Security and State Unemployment Taxes and any other payroll taxes or other disbursements of any kind incidental to salaries or wages which Architect-Engineer may be required to pay by law, including the cost of all permits, licenses and fees required in connection with The Work.

(6) The Cost of all construction tools, machinery and equipment used in the performance of The Work provided, however, that no single such item costing in excess of Three Hundred Dollars (\$300.00) shall be charged to The Work or reimbursement made therefore unless the purchase thereof is approved by Owner.

(7) The costs of traveling, moving and living expenses, if necessary, of Architect-Engineer's field representatives and field supervisory staff and the expense of procuring labor and other personnel, provided such costs are approved or ratified by Owner.

(8) The cost to Architect-Engineer of local telephone service, long distance telephone calls, telegrams, teletypes, postage, duplicating, photostating, office supplies and other similar expense incurred in the field directly in connection with the prosecution of The Work.

(9) The amount of losses and/or expenses, not compensated by Architect-Engineer's insurance or otherwise, actually sustained by Architect-Engineer in connection with The Work except to the extent that any such loss or expense is due to the failure on the part of the corporate officers of Architect-Engineer or a representative of Architect-Engineer having supervision or direction of The Work as a whole to exercise good faith or the standard of care which they normally exercise in the conduct of the business of Architect-Engineer.

B. Home Office Costs. Owner shall pay Architect-Engineer for work, services, and costs incurred in connection with The Work at Architect-Engineer's Home Office as follows:

(1) All amounts actually paid or incurred by Architect Engineer under subcontracts and/or purchase orders properly let or issued by Architect-Engineer from its Home Office.

(2) For all services in connection with The Work performed by Architect-Engineer's Direct Engineering Department as said Department is defined in the Master Agreement, Owner shall pay Architect-Engineer as follows:

(a) For all direct salaries and wages paid by Architect-Engineer to personnel comprising the Direct Engineering Department for time actually consumed in performing The Work;

- (b) The amount of all direct travel expenses, including expense accounts and long distance telephone and telegraph charges incurred by personnel in the Direct Engineering Department in the performance of services in connection with The Work, as well as the cost of photostats and blueprints at Architect-Engineer's standard rates and other like direct costs and expenses incurred by the Direct Engineering Department in connection with The Work;
- (c) An amount equal to 100% of the total salaries and wages chargeable to Owner under subparagraph (a) above to cover payroll taxes, compensation insurance, vacation allowance, rent, utilities, supplies, accounting expense and all other overhead expenses of Architect-Engineer in connection with its Direct Engineering Department.

(3) For all services in connection with The Work performed by Engineers' Staff as said Staff is defined in the Master Agreement, there shall be no charge hereunder while the Master Agreement remains in effect and Engineers' Staff charges are paid under and pursuant thereto. If the Master Agreement shall be cancelled as therein provided, then, from and after the effective date of such cancellation, Engineers' Staff shall be deemed a part of Architect-Engineer's Direct Engineering Department and time and other expenses of members of Engineers' Staff thereafter performing services in connection with The Work shall be charged to and paid by Owner hereunder in accordance with subparagraphs (2) (a), (2) (b) and (2) (c) above.

ARTICLE C - ESTIMATES - FIXED FEE

Section C-1. Architect-Engineer will prepare an estimate of the cost of The Work to be performed and will submit the same to Owner for approval. In addition to the reimbursement of the Architect-Engineer for costs incurred in connection with The Work as hereinabove provided in Article B, Owner shall pay Engineer-Contractor a Fixed Fee in an amount to be determined by mutual agreement after bids for construction work hereunder have been received, and shall be based upon the Fee Schedule attached as Exhibit "B" to the Master Agreement. When the amount of the Fixed Fee has been so determined it shall be specified in a Change Order hereto. Said Fee shall not be subject to modifications except for changes in The Work ordered by Owner which may increase or decrease the scope of The Work, in which event, said Fixed Fee shall be subject to adjustment as hereinafter provided. In order that Architect-Engineer shall be paid the applicable portion of the fee as it accrues as provided in Section D-2 of this Agreement, and until such time as the Fixed Fee is established as provided hereinabove, it is estimated that the Fixed Fee will amount to \$86,000 (which amount is hereinafter referred to as "Estimated Fee") but neither party guarantees the correctness of said estimate.

ARTICLE D - PAYMENT

Section D-1. At the end of each calendar month, or oftener if found mutually desirable, Architect-Engineer shall submit its invoices for costs of The Work accruing during the preceding calendar month or shorter period, as the case may be, under and pursuant to the terms of Article B hereof, which said invoices shall be due and payable by Owner within fifteen (15) days after Owner's receipt thereof. All invoices shall be supported by such documents and other evidence as Owner may reasonably request.

Section D-2. Until such time as Architect-Engineer's Fixed Fee is established, ninety percent of the Architect-Engineer's Estimated Fee shall be paid by Owner to Architect-Engineer in monthly installments as it accrues based upon the percentages of The Work as determined by Owner from estimates submitted by Architect-Engineer to

Owner and approved by Owner. Upon the establishment of the Fixed Fee monthly fee installments shall be based upon said Fixed Fee as it accrues, based upon the aforementioned percentage of completion of The Work. Upon completion of The Work and its acceptance by Owner, the remaining ten percent of the Architect-Engineer Fixed Fee shall be immediately due and payable.

ARTICLE E - APPROVALS

Section E-1. The general design and layout of The Work, plans and specifications therefor, shall be subject to the approval of the Owner.

ARTICLE F - CHANGES

Section F-1. Owner may at any time by written order to Architect-Engineer, issue instructions requiring additional work or services, changes or alterations in The Work and/or direct the omission of work or services covered by this Contract. If, in the opinion of Owner, said additions, changes, alterations or omissions result in a material increase or decrease in the scope or character of The Work, an equitable adjustment of the fixed fee of Architect-Engineer shall be made for any additional work required or work omitted in accordance with the fee schedule attached to the Master Agreement. The amount of the fixed fee shall not be adjusted or changed because of any errors or omissions in computing the estimated cost of The Work or where the actual cost or time for completion vary from the original estimates thereof. Architect-Engineer shall make no additions, changes, alterations or omissions which affect the scope or character of The Work except upon the prior written order of Owner.

ARTICLE G - BOOKS AND RECORDS

Section G-1. Architect-Engineer shall keep a complete set of records and books of account on a recognized cost accounting basis satisfactory to Owner, showing all expenditures of whatever nature made or incurred, as provided in Section B-1, subparagraph A of this Contract. Architect-Engineer agrees to permit Owner to examine said books and records in connection with The Work at the place or places where the same may be kept, during reasonable business hours, for the purpose of permitting Owner to verify invoices or other documents submitted to Owner covering field charges for The Work. Architect-Engineer shall also keep time cards and other records showing all Home Office charges

accruing under Section B-1, subparagraph B of this Contract, and Owner shall have the right to examine said time cards and other records, during reasonable business hours, for the purpose of verifying Architect-Engineer's invoices for said Home Office charges. Architect-Engineer shall not be required to retain said books and records for more than one (1) year after completion of this Contract.

ARTICLE H - INSURANCE

Section H-1. During the progress of The Work, Owner shall maintain such fire and other physical damage insurance as it may deem expedient or appropriate to fully protect The Work.

Section H-2. During the course of The Work, Architect-Engineer shall maintain Workmen's Compensation Insurance, Statutory Coverage, Comprehensive Public Liability Insurance, Property Damage Insurance and such other insurance as Owner may direct or approve. All insurance to be carried and maintained by Architect-Engineer shall be in such amounts as may be mutually agreed upon between Owner and Architect-Engineer.

Section H-3. The Owner hereby releases Architect-Engineer from any liability for physical damage to the Owner's property howsoever caused in connection with the work performed under this Contract to the extent that the Owner is insured for such damage under its fire and other physical damage insurance policies.

If any of the fire or physical damage insurance policies of Owner do not permit release of other persons or firms from liability before a loss, endorsement to such policies shall be obtained from the respective insurance carriers as may be necessary to effect a waiver of the right of subrogation by such insurance carriers against the parties to this agreement.

Notwithstanding the foregoing, there shall be no release from liability nor waiver of subrogation with respect to injury to persons covered by Workmen's Compensation or Employers' Liability policies.

ARTICLE I - INSPECTION

Section I-1. Architect-Engineer shall inspect the construction work as Owner's agent to determine that the same is performed in accordance with the drawings and specifications and in good workmanlike manner by qualified, careful and efficient

workers in strict conformity with good standards of practice.

ARTICLE J - COMMENCEMENT AND COMPLETION OF THE WORK

Section J-1. The Work shall be commenced as of July 13, 1953 and shall be completed as soon thereafter as good practice and due diligence will permit. All costs, as described in Article B, incurred in connection with The Work from and after July 13, 1953, except as provided in Section B-1, subdivision B (3) shall be chargeable to and paid under this Contract.

Section J-2. Upon completion of The Work and its final acceptance in writing by Owner, Owner shall pay the unpaid balance of the cost of The Work and the balance of Architect-Engineer's fee, less any sum that may be necessary to settle any claims which Owner may have against Architect-Engineer or that may be necessary to settle any outstanding obligations of Architect-Engineer arising out of or incident to the performance of The Work. Owner shall accept The Work with reasonable promptness after completion.

Section J-3. All plans, drawings, specifications and the like relating to The Work shall be and remain the property of Architect-Engineer. Upon completion of The Work, Architect-Engineer shall deliver to Owner a complete corrected set of drawings of The Work as completed and such additional copies thereof as Owner may request which shall be used by Owner only in connection with the operation, maintenance and repair of The Work as completed.

ARTICLE K - TERMINATION

Owner may at its convenience terminate this Contract in whole or in part at any time by giving written notice to Architect-Engineer. Such notice shall state the extent and effective date of such termination and on the effective date thereof Architect-Engineer will, as and to the extent directed, stop work under this Contract. In the event of such termination, Owner shall pay to Architect-Engineer (1) its costs determined in accordance with Article B, hereof, for all work done in conformity with the Contract prior to the effective date of such termination, and (2) other costs pertaining to the work which Architect-Engineer may incur as a result of such termination, all as approved by Owner, plus a fee determined in accordance with the Fee Schedule attached to the

Master Agreement based on the work performed by Architect-Engineer prior to the effective date of termination. Any payment under this Article shall be due and payable within Fifteen (15) days after Owner's receipt of Architect-Engineer's invoice covering the above specified costs and fee.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first hereinabove written.

KAISER GYPSUM COMPANY, INC.
Owner

By /s/ C. E. Harper
Vice President

KAISER ENGINEERS
Division of Henry J. Kaiser Company
Architect-Engineer

By /s/ George Havas
Vice President

Approved as to form:

By /s/ A. L. Denney
Legal Department